

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:

August 25, 2010

Fund A =

Fund B =

Fund C =

Fund D =

Fund E =

Trust =

State =

Country =

Type A =
Company

Date 1 =

x =

Dear :

This is in response to your letter dated March 30, 2010, and your supplemental letters dated June 4, 2010, July 23, 2010, and August 5, 2010, submitted by your authorized representative on behalf of Fund A, Fund B, Fund C, Fund D, and Fund E (each, a “Fund” and collectively, the “Funds”). The Funds request that the Internal Revenue Service rule that income derived by each Fund from a controlled foreign corporation is income with respect to the Fund’s business of investing in the stock of such subsidiary and thus constitutes qualifying income under section 851(b)(2) of the Internal Revenue Code of 1986, as amended (the “Code”).

FACTS

Trust is organized as a State statutory trust and consists of x series, including Funds. Trust is an open-end management investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the “1940 Act”). Each Fund is a separate series of Trust, and each Fund is treated as a corporation under section 851(g)(1). Each Fund has filed an election to be a regulated investment company (RIC) under section 851(b)(2) and intends each year to meet the diversification requirements set forth in section 851(b)(3) and the distribution requirements in section 852(a). Each Fund uses an accrual method of accounting, and each Fund has an annual accounting period ending on Date 1.

Each Fund intends to form a wholly-owned foreign subsidiary (each a “Subsidiary,” and collectively, the “Subsidiaries”) formed as a Type A Company under the laws of Country. Under the laws of Country, a Type A Company provides limited liability for all of its shareholders. Each Fund will own 100% of the outstanding shares of any such Subsidiary in which it invests. Each Subsidiary will file an election on Form 8832, Entity Classification Election, to be taxed as a corporation pursuant to section 301.7701-3 of the Procedure and Administration Regulations.

Each Fund represents that although the Subsidiaries will not be registered as investment companies under the 1940 Act, each Subsidiary will comply with the requirements of Section 18(f) of the 1940 Act, with Investment Company Release No. 10666, and with related Securities and Exchange Commission guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives.

Each Fund intends to invest a portion of its assets in one or more Subsidiaries, subject to the diversification requirements of section 851(b)(3). The Subsidiaries will invest in various investments that are linked to the performance of one or more commodities or of one or more commodities indexes, which may include commodity and financial futures and option contracts, deliverable forward contracts and cash-settled non-deliverable forward contracts, commodity-linked notes, and swaps on commodities or commodities indexes. The Subsidiaries also may invest in commodities directly and in various other leveraged and non-leveraged commodity-related instruments. Although the Funds expect that the Subsidiaries will invest primarily in commodities and commodity-related investments and expect that the Subsidiaries' income will be primarily derived from those investments, the Subsidiaries may also hold from time to time other stock, securities, debt and cash (as collateral for leveraged commodity-related investments or as independent investments).

LAW AND ANALYSIS

Section 851(b)(2) of the Code provides that a corporation shall not be considered a RIC for any taxable year unless it meets an income test. Under this test, at least 90 percent of its gross income must be derived from certain enumerated sources. Under section 851(b)(2), a corporation's qualifying income includes –

dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies .

. . .

Section 2(a)(36) of the 1940 Act defines the term “security” as –

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for,

receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

In addition, the flush language of section 851(b) of the Code provides that, for purposes of section 851(b)(2), there shall be treated as dividends amounts included in gross income under sections 951(a)(1)(A)(i) or 1293(a) for the taxable year to the extent that, under sections 959(a)(1) or 1293(c) (as the case may be), there are distributions out of the earnings and profits of the taxable year which are attributable to the amounts so included.

Section 957 of the Code defines a controlled foreign corporation (CFC) as any foreign corporation in which more than 50 percent of (1) the total combined voting power of all classes of stock entitled to vote, or (2) the total value of the stock is owned by United States shareholders on any day during the corporation's taxable year. A United States shareholder is defined in section 951(b) as a United States person who owns 10 percent or more of the total combined voting power of all classes of voting stock of a foreign corporation. Each Fund is a United States person. Each Fund represents that it will wholly own its Subsidiary. Therefore, the Funds represent that the Subsidiaries will qualify as CFCs under these provisions.

Section 951(a)(1) of the Code provides that, if a foreign corporation is a CFC for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder of the corporation and who owns stock in the corporation on the last day of the taxable year in which the corporation is a CFC shall include in gross income the shareholder's pro rata share of the CFC's subpart F income for the taxable year.

Section 952 of the Code defines subpart F income to include foreign base company income determined under section 954. Under section 954(a)(1), foreign base company income includes foreign personal holding company income determined under section 954(c). Section 954(c)(1) defines foreign personal holding company income to include (among other items): dividends, interest, royalties, rents, and annuities; gains in excess of losses from transactions in commodities (including futures, forward, and similar transactions but excluding certain hedging transactions and certain active business gains and losses); and, subject to certain exceptions, net income from notional principal contracts.

The Subsidiaries' income from investments in commodities and commodity-linked instruments is expected to generate subpart F income. Each Fund will therefore be required to include in its income its pro rata share of such Subsidiaries' subpart F income for each taxable year in accordance with section 951.

CONCLUSION

Based on the facts as represented, we rule that subpart F income of a Subsidiary attributable to any Fund is income derived with respect to such Fund's business of investing in the stock of such Subsidiary and thus constitutes qualifying income under section 851(b)(2) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether the Funds qualify as RICs under subchapter M of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)